House Bill 1246 (AS PASSED HOUSE AND SENATE)

By: Representatives Peake of the 137th, Royal of the 171st, and Parrish of the 156th

A BILL TO BE ENTITLED

AN ACT

To amend Title 48 and 33 of the Official Code of Georgia Annotated, relating, respectively, to revenue and taxation and insurance, so as to revise and change certain provisions regarding state taxation; to change certain provisions regarding income tax credits for certain business enterprises by including broadcasting; to change certain provisions regarding income tax credits for business enterprises in less developed areas by including broadcasting; to change certain provisions regarding income tax credits for qualified research expenses by including broadcasting; to change certain provisions regarding alternative tax credits for base year port traffic increases by including broadcasting; to change certain provisions regarding income tax credits for existing business enterprises undergoing qualified business expansion by including broadcasting; to change certain provisions regarding income tax credits to business enterprises for leased motor vehicles by including broadcasting; to provide for state insurance premium tax credits for insurance companies located in certain counties designated as less developed areas; to provide for procedures, conditions, and limitations; to provide for assignment, carryover, and liability regarding such credits; to provide for powers, duties, and authority of the commissioner of community affairs and the Commissioner of Insurance; to provide for related matters; to provide for effective dates; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising subsection (a) and paragraph (2) of subsection (e) of Code Section 48-7-40, relating to income tax credits for certain business enterprises, as follows:

"(a) As used in this Code section, the term:

(1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. 'Broadcasting'

is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

~~(1)~~(2) 'Business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses.

~~(2)~~(3) 'Existing business enterprise' means any business or the headquarters of any such business which has operated for the immediately preceding three years a facility in this state which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, or research and development industries. Such term shall not include retail businesses."

"(2) Existing business enterprises ~~as defined under paragraph (2) of subsection (a) of this Code section~~ shall be allowed an additional tax credit for taxes imposed under this article equal to $500.00 per eligible new full-time employee job for one year after the creation of such job. The additional credit shall be claimed in year two after the creation of such job. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the taxable year with the corresponding period of the prior taxable year. In tier 1 counties, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The state revenue commissioner shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier. This paragraph shall apply only to new eligible full-time jobs created in taxable years beginning on or after January 1, 2006, and ending no later than taxable years beginning prior to January 1, 2011.″

SECTION 2.

Said title is further amended by revising subsection (a) of Code Section 48-7-40.1, relating to tax credits for business enterprises in less developed areas, as follows:

″(a) As used in this Code section, the term:

(1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. 'Broadcasting' is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

(2) 'Business ~~'business~~ enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses.″

SECTION 3.

Said title is further amended by revising subsection (a) of Code Section 48-7-40.12, relating to tax credits for qualified research expenses, as follows:

″(a) As used in this Code section, the term:

(1) 'Base amount' means the product of a business enterprise′s Georgia taxable net income in the current taxable year and the average of the ratios of its aggregate qualified research expenses to Georgia taxable net income for the preceding three taxable years or 0.300, whichever is less.

(2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. 'Broadcasting' is limited to establishments classified under the 2007 North American Industry

Classification System Codes 515, broadcasting; 516, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

~~(2)~~(3) 'Business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries. Such term shall not include retail businesses.

~~(3)~~(4) 'Qualified research expenses' means qualified research expenses for any business enterprise as that term is defined in Section 41 of the Internal Revenue Code of 1986, as amended, except that all wages paid and all purchases of services and supplies must be for research conducted within the State of Georgia.″

SECTION 4.

Said title is further amended by revising subsection (a) of Code Section 48-7-40.15, relating to alternative tax credits for base year port traffic increases, as follows:

″(a) As used in this Code section, the term:

(1) 'Base year port traffic' means the total amount of net tons, containers, or twenty-foot equivalent units (TEU´s), of product actually transported by way of a waterborne ship or vehicle through a port facility during the period from January 1, 1997, through December 31, 1997; provided, however, that in the event the total amount actually transported during such period was not at least 75 net tons, five containers, or ten twenty-foot equivalent units (TEU´s), then 'base year port traffic' means 75 net tons, five containers, or ten twenty-foot equivalent units (TEU´s).

(2) 'Broadcasting' means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. 'Broadcasting' is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

~~(2)~~(3) 'Business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, and research and development industries but shall not include retail businesses.

~~(3)~~(4) 'Port facility' means any privately owned or publicly owned facility located within this state through which product is transported by way of a waterborne ship or vehicle to or from destinations outside this state.

~~(4)~~(5) 'Port traffic' means the total amount of net tons, containers, or twenty-foot equivalent units (TEU´s) of product transported by way of a waterborne ship or vehicle through a port facility.

~~(5)~~(6) 'Product' means a marketable product or component of a product which has an economic value to the wholesale or retail consumer and is ready to be used without further alteration of its form or a product or material which is marketed as a prepared material or is a component in the manufacturing and assembly of other finished products.

~~(6)~~(7) 'Qualified investment property' means all real and personal property purchased or acquired by a taxpayer for use in the construction of an additional manufacturing or telecommunications facility to be located in this state or in the expansion of an existing manufacturing or telecommunications facility located in this state, including, but not limited to, moneys expended on land acquisition, improvements, buildings, building improvements, and machinery and equipment to be used in the manufacturing or telecommunications facility. The department shall promulgate rules defining eligible manufacturing facilities, telecommunications facilities, and qualified investment property pursuant to this Code section.″

SECTION 5.

Said title is further amended by revising subsection (a) of Code Section 48-7-40.21, relating to tax credits for existing business enterprises undergoing qualified business expansion, as follows:

″(a) As used in this Code section, the term:

(1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. 'Broadcasting' is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

~~(1)~~(2) 'Existing business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, or research and development industries that has been in operation in this state for at least five years. Such term shall not include retail businesses.

~~(2)~~(3) 'Qualified business expansion' means the creation of at least 500 new full-time jobs within a taxable year.″

SECTION 6.

Said title is further amended by revising subsection (a) of Code Section 48-7-40.22, relating to income tax credits to business enterprises for leased motor vehicles, as follows:

″(a) As used in this Code section, the term:

(1) 'Broadcasting' means the transmission or licensing of audio, video, text, or other programming content to the general public, subscribers, or to third parties via radio, television, cable, satellite, or the Internet or Internet Protocol and includes motion picture and sound recording, editing, production, postproduction, and distribution. 'Broadcasting' is limited to establishments classified under the 2007 North American Industry Classification System Codes 515, broadcasting; 516, Internet publishing and broadcasting; 517, telecommunications; and 512, motion picture and sound recording industries.

~~(1)~~(2) 'Business enterprise' means any business or the headquarters of any such business which is engaged in manufacturing, warehousing and distribution, processing, telecommunications, broadcasting, tourism, research and development industries, child care businesses, or retail businesses.

~~(2)~~(3) 'Headquarters' means the principal central administrative office of a taxpayer.

~~(3)~~(4) 'Tier' means a tier as designated pursuant to Code Section 48-7-40, as amended.″

SECTION 7.

Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by adding a new Code section to read as follows:

″33-8-4.1.

(a) As used in this Code section, the term:

(1) 'Business enterprise' means any insurance company or the headquarters of any insurance company required to pay the tax under Code Section 33-8-4.

(2) 'Existing business enterprise' means any insurance company or the headquarters of any insurance company required to pay the tax under Code Section 33-8-4 which has operated for the immediately preceding three years a facility in this state.

(b)(1) Not later than December 31 of each year, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner of community affairs shall rank and designate as less developed areas all 159 counties in this state using a combination of the following equally weighted factors:

(A) Highest unemployment rate for the most recent 36 month period;

(B) Lowest per capita income for the most recent 36 month period; and

(C) Highest percentage of residents whose incomes are below the poverty level according to the most recent data available.

(2) Counties ranked and designated as the first through seventy-first least developed counties shall be classified as tier 1, counties ranked and designated as the seventy-second through one hundred sixth least developed counties shall be classified as tier 2, counties ranked and designated as the one hundred seventh through one hundred forty-first least developed counties shall be classified as tier 3, and counties ranked and designated as the one hundred forty-second through one hundred fifty-ninth least developed counties shall be classified as tier 4.

(c) The commissioner of community affairs shall be authorized to include in the tier 2 designation provided for in subsection (b) of this Code section any tier 3 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 2 county.

(d) The commissioner of community affairs shall be authorized to include in the tier 1 designation provided for in subsection (b) of this Code section any tier 2 county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a tier 1 county.

(e) For business enterprises which plan a significant expansion in their labor forces, the commissioner of community affairs shall prescribe redesignation procedures to ensure that the business enterprises can claim credits in future years without regard to whether or not a particular county is reclassified in a different tier.

(f)(1) Business enterprises in counties designated by the commissioner of community affairs as tier 1 counties shall be allowed a job tax credit for taxes imposed under Code Section 33-8-4 equal to $3,500.00 annually per eligible new full-time employee job for five years beginning with years two through six after the creation of such job. Business enterprises in counties designated by the commissioner of community affairs as tier 2 counties shall be allowed a job tax credit for taxes imposed under Code Section 33-8-4 equal to $2,500.00 annually, business enterprises in counties designated by the commissioner of community affairs as tier 3 counties shall be allowed a job tax credit for taxes imposed under Code Section 33-8-4 equal to $1,250.00 annually, and business enterprises in counties designated by the commissioner of community affairs as tier 4 counties shall be allowed a job tax credit for taxes imposed under Code Section 33-8-4 equal to $750.00 annually for each new full-time employee job for five years beginning with years two through six after the creation of the job. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the calendar year with the corresponding period of the prior calendar year. In tier 1 counties, those business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those business enterprises that increase employment by ten or more shall be eligible for the credit. In tier 3 counties, only those business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The Commissioner of Insurance shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier.

(2) Existing business enterprises as defined under paragraph (2) of subsection (a) of this Code section shall be allowed an additional tax credit for taxes imposed under Code Section 33-8-4 equal to $500.00 per eligible new full-time employee job for one year after the creation of such job. The additional credit shall be claimed in year two after the creation of such job. The number of new full-time jobs shall be determined by comparing the monthly average number of full-time employees subject to Georgia income tax withholding for the calendar year with the corresponding period of the prior calendar year. In tier 1 counties, those existing business enterprises that increase employment by five or more shall be eligible for the credit. In tier 2 counties, only those existing business enterprises that increase employment by ten or more shall be eligible for the

credit. In tier 3 counties, only those existing business enterprises that increase employment by 15 or more shall be eligible for the credit. In tier 4 counties, only those existing business enterprises that increase employment by 25 or more shall be eligible for the credit. The average wage of the new jobs created must be above the average wage of the county that has the lowest average wage of any county in the state to qualify as reported in the most recently available annual issue of the Georgia Employment and Wages Averages Report of the Department of Labor. To qualify for a credit under this paragraph, the employer must make health insurance coverage available to the employee filling the new full-time job; provided, however, that nothing in this paragraph shall be construed to require the employer to pay for all or any part of health insurance coverage for such an employee in order to claim the credit provided for in this paragraph if such employer does not pay for all or any part of health insurance coverage for other employees. Credit shall not be allowed during a year if the net employment increase falls below the number required in such tier. Any credit received for years prior to the year in which the net employment increase falls below the number required in such tier shall not be affected. The Commissioner of Insurance shall adjust the credit allowed each year for net new employment fluctuations above the minimum level of the number required in such tier. This paragraph shall apply only to new eligible full-time jobs created on or after January 1, 2009, and prior to January 1, 2014.

(g) Tax credits for five years for the taxes imposed under Code Section 33-8-4 shall be awarded for additional new full-time jobs created by business enterprises qualified under subsection (b), (c), or (d) of this Code section. Additional new full-time jobs shall be determined by subtracting the highest total employment of the business enterprise during years two through six, or whatever portion of years two through six which has been completed, from the total increased employment. The Commissioner of Insurance shall adjust the credit allowed in the event of employment fluctuations during the additional five years of credit.

(h) The sale, merger, acquisition, or bankruptcy of any business enterprise shall not create new eligibility in any succeeding business entity, but any unused job tax credit may be transferred and continued by any transferee of the business enterprise. The commissioner of community affairs shall determine whether or not qualifying net increases or decreases have occurred and may require reports, promulgate regulations, and hold hearings as needed for substantiation and qualification.

(i)(1) Except as provided in paragraph (2) of this subsection, any credit claimed under this Code section but not used in that calendar year may be carried forward for ten years from the close of the calendar year in which the qualified jobs were established, but in tiers 3 and 4 the credit established by this Code section taken in any one calendar year shall be limited to an amount not greater than 50 percent of the taxpayer's tax liability under Code Section 33-8-4 which is attributable to operations in this state for that calendar year. In tier 1 and 2 counties, the credit allowed under this Code section against taxes imposed under Code Section 33-8-4 in any calendar year shall be limited to an amount not greater than 100 percent of the taxpayer's tax liability under Code Section 33-8-4 attributable to operations in this state for such calendar year.

(2) The additional credit claimed by an existing business enterprise pursuant to the provisions of paragraph (2) of subsection (f) of this Code section must be applied against taxes imposed for the calendar year in which such credit is available and may not be carried forward to any subsequent calendar year.

(j) The Commissioner of Insurance may require such reports, promulgate such regulations, and gather such relevant data necessary and advisable for the evaluation of the job tax credits established by this Code section."

SECTION 8.

Said title is further amended by adding a new Code section to read as follows:

"33-8-4.2.

(a) As used in this Code section, the term 'affiliated entity' means:

(1) A corporation that is a member of the taxpayer's 'affiliated group' within the meaning of Section 1504(a) of the Internal Revenue Code and which corporation has a tax liability under Code Section 33-8-4; or

(2) An entity affiliated with a corporation, business, partnership, or limited liability company taxpayer, which entity has a tax liability under Code Section 33-8-4 and which entity:

(A) Owns or leases the land on which a project is constructed;

(B) Provides capital for construction of the project; and

(C) Is the grantor or owner under a management agreement with a managing company of the project.

(b) In lieu of claiming any tax credit under Code Section 33-8-4.1 for which a taxpayer otherwise is eligible for the calendar year (such eligibility being determined for this purpose without regard to any limitation imposed by reason of the taxpayer's precredit tax liability under Code Section 33-8-4), the taxpayer may elect to assign such credit in whole or in part to one or more affiliated entities for such calendar year by attaching a statement to the taxpayer's return for the calendar year; provided, however, that no carryover attributable to the unused portion of any previously claimed or assigned credit may be assigned or reassigned, except as provided in subsection (d) of this Code section. Such election must be made on or before the due date for filing the applicable tax return under

Code Section 33-8-4, including any extensions which have been granted. In the case of any credit that must be claimed in installments in more than one calendar year, the election under this subsection may be made on an annual basis with respect to each such installment, provided that the taxpayer shall notify the Commissioner of Insurance with respect to the assignment of each such installment by filing a separate copy of the election statement for such installment no later than the due date for filing the applicable tax return under Code Section 33-8-4, including any extensions which have been granted. Once made, an election under this subsection shall be irrevocable.

(c) The recipient of a tax credit assigned under subsection (b) of this Code section shall attach a statement to its tax return under Code Section 33-8-4 identifying the assignor of the tax credit, in addition to providing any other information required to be provided by a claimant of the assigned tax credit.

(d) If the assignor and the recipient of a tax credit assigned under subsection (b) of this Code section cease to be affiliated entities, any carryover attributable to the unused portion of such credit shall be transferred back to the assignor of the credit. Such assignor shall be permitted to use any such carryover itself and also shall be permitted to assign such carryover to one or more affiliated entities, as if such carryover were a tax credit under Code Section 33-8-4.1 for which the assignor became eligible in the calendar year in which the carryover was transferred back to the assignor.

(e) The assignor and recipient of a tax credit assigned under subsection (b) of this Code section shall be jointly and severally liable for any tax under Code Section 33-8-4 (plus interest and penalties, if any) attributable to the disallowance or recapture of the assigned credit."

SECTION 9.

(a) Except as otherwise provided in subsection (b) of this section, this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall be applicable to all taxable years beginning on or after January 1, 2008.

(b) Sections 7 and 8 shall become effective on January 1, 2009.

SECTION 10.

All laws and parts of laws in conflict with this Act are repealed.